

**ORDINANCE NO. 28332**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTERS 3.28 AND 3.36 OF TITLE 3 OF THE SAN JOSÉ MUNICIPAL CODE TO PROVIDE THE CITY WITH THE OPTION TO MAKE LUMP SUM PAYMENTS OF CITY REQUIRED CONTRIBUTIONS TO THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN AND TO THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN ON OR BEFORE AUGUST 1, 2008 FOR THE BALANCE OF FISCAL YEAR 2008-09, TO PROVIDE THE CITY WITH AN ANNUAL OPTION COMMENCING WITH FISCAL YEAR 2009-10 TO SELECT THE PERIODIC BASIS ON WHICH CITY REQUIRED CONTRIBUTIONS WILL BE MADE IN ADVANCE TO THE PLANS, TO PROVIDE FOR THE ESTABLISHMENT BY EACH RETIREMENT BOARD OF THE AMOUNTS OF THE CITY REQUIRED CONTRIBUTIONS FOR THE ADVANCE LUMP SUM PAYMENT FOR FISCAL YEAR 2008-09 AND FOR SUCH ALTERNATIVE PERIODIC BASES AS CITY MAY SELECT COMMENCING WITH FISCAL YEAR 2009-10, TO PROVIDE THAT CITY REQUIRED PAYMENTS TO THE MEDICAL BENEFITS ACCOUNTS WITHIN SAID PLANS SHALL BE MADE ON THE SAME PERIODIC BASIS AS RETIREMENT CONTRIBUTION PAYMENTS ARE MADE, AND TO PROVIDE FOR ADJUSTMENT OF THE CITY CONTRIBUTIONS IN THE FOLLOWING FISCAL YEAR AFTER ANY LUMP SUM PAYMENT IS MADE TO REFLECT ANY DIFFERENCE IN CONTRIBUTIONS DUE TO A VARIANCE BETWEEN THE ACTUAL PAYROLL AMOUNT FOR THE FISCAL YEAR IN WHICH THE PAYMENT WAS MADE AS COMPARED TO THE PROJECTED PAYROLL AMOUNT ON WHICH THE LUMP SUM PAYMENT WAS CALCULATED**

**WHEREAS**, the Boards of Administration for the Police and Fire Department Retirement Plan and Federated City Employees Retirement Plan have been provided a copy of this draft ordinance for their review and recommendation;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

**SECTION 1.** Section 3.28.380 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.380 Medical benefits account.**

A. There is hereby established the medical benefits account as a separate account within the retirement fund. The medical benefits account shall be maintained in compliance with Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. Monies in the medical benefits account may be commingled with other monies in the retirement fund solely for the purposes of investment.

B. All contributions made to the retirement fund to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this system, and all earnings and interest attributable to such contributions, shall be placed in the medical benefits account. All contributions to the medical benefits account shall be reasonable and ascertainable. At the time the city makes a contribution to the medical benefits account, the city shall designate in writing that such contribution is solely for the medical benefits account.

C. Contribution rates to fund the benefits for sickness, accident, hospitalization, dental or medical expenses shall be established by the board as determined by the board's actuary and shall be borne by the city and the members of the plan as follows:

1. Contributions for dental benefits shall be made by the city and the members in the ratio of eight-to-three.
2. Contributions for medical and dental insurance premiums costs attributable to the early retirement incentive programs described in Parts 18, 19, and 20 of this chapter shall be borne by the city.
3. Contributions for other benefits provided through the medical benefits account shall be made by the city and the members in the ratio of one-to-one.

D. Except as otherwise provided in this Section 3.28.380, all funds in the medical benefits account shall be used only for the payment of benefits and expenses allowed under Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. The medical benefits account shall be used to provide medical and dental benefits in accordance with Parts 16 and 17 of this chapter. Prior to the satisfaction of all liabilities under this system to provide such benefits, no funds in the medical benefits account shall be used for, or diverted to, any other purpose.

E. All benefits provided through the medical benefits account, plus any life insurance protection provided under the system, shall be subordinate to the retirement and survivors' benefits provided by the system. Accordingly, at all times after the date on

which the medical benefits account is established, the aggregate of the city's contributions to the medical benefits account shall not exceed twenty-five (25) percent of its total aggregate contributions to the system (other than contributions to fund prior service). For the purpose of this limitation, city contributions include any contributions which are "picked-up" pursuant to Internal Revenue Code Section 414(h).

F. In any case under the terms of this system where a person is entitled to a return of employee contributions, such return of contributions shall include the employee contributions to the medical benefits account plus interest accrued thereon at the rate of two (2) percent per annum; provided, however, that no such return of contributions shall be paid from the medical benefits account.

G. Upon the satisfaction of all liabilities under this system to provide the benefits described in this section, any amount remaining in the medical benefits account shall be paid to the city.

H. In the event that a member's interest in the medical benefits account is forfeited prior to the termination of the system, an amount equal to the forfeiture shall be applied as soon as practicable to reduce the city contributions to the medical benefits account.

I. City contributions and member contributions to the medical benefits account shall be made on the same periodic basis as City contributions and member contributions are made to the retirement fund. City contributions and member contributions to the medical benefits account may be paid on different payment schedules.

**SECTION 2.** Section 3.28.940 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.940 Time of payment of city contributions.**

A. Such monthly or biweekly contributions as are required of the city by the provisions of this Part 7 shall be paid by the city within ten days from and after the end of the month or two-week period for which they are made.

B. In lieu of making the monthly or biweekly contributions specified in this Part 7 for the pay periods commencing with the third pay period in fiscal year 2008-09, the City shall have the option to make, on or before August 1, 2008, an advance lump sum payment of the City's contributions to the medical benefits account and the retirement fund. The amount of such advance lump sum payment for fiscal year 2008-09 shall be as

determined by the Board to be actuarially equivalent to the monthly or biweekly payments that would otherwise have been the City's required contributions to the medical benefits account and the retirement fund for the pay periods commencing with the third pay period in fiscal year 2008-09.

C. Commencing with fiscal year 2009-10, the City shall have an annual option to select the periodic basis on which City contributions to the medical benefits account and to the retirement fund for that fiscal year will be paid; provided that such payment schedule shall be no less frequent than quarterly. Except as may otherwise be agreed to by the Board, the notice of intent to exercise the option, including the periodic basis selected and the payment date(s) (the "Notice of Intent"), shall be provided by the City Manager to the Board on or before April 30th of the fiscal year prior to the fiscal year in which City may wish to exercise the option. The amount of the periodic payment(s) contained in City's Notice of Intent shall be as determined by the Board to be actuarially equivalent to the monthly or biweekly payment that would otherwise have been required.

D. In the event that written Notice of Intent to exercise the option to select an alternative periodic payment schedule, has not been given by the City Manager to the Board on or before April 30<sup>th</sup>, or such other date as may be approved by the Board, of each fiscal year, or if subsequent to the giving of such notice and prior to the commencement of the fiscal year, City elects not to exercise the option to select an alternative periodic payment schedule, City's payment of the City's contributions to the medical benefits account and to the retirement fund shall be made monthly or biweekly as otherwise specified in this Part 7.

E. Such alternative periodic payments as are made by the City pursuant to the provisions of this Part 7 shall be paid by the City within ten days of the payment date(s) specified in City's Notice of Intent.

F. No later than the end of the second pay period in the fiscal year immediately following a fiscal year in which City has made a lump sum payment as specified in paragraph B and C, City shall provide to the Board a statement showing the actual amount of the City's payroll for members of the system for the prior fiscal year. The Board shall then determine whether the lump sum advance payment(s) and the payment(s) that would otherwise have been required in the absence of the lump sum advance payment(s) are actuarially equivalent. The City shall pay any underpayment by the earlier of ten days following receipt of the Board's notice of determination or City's

next contribution due date. The City shall receive credit for any overpayment in the form of an offset against the next payment(s) due by the City.

G. In the event that a City elected lump sum payment is made later than the Payment Date specified in the City's Notice of Intent, City's contribution to the medical benefits account and to the retirement fund will be recalculated by the Board's actuary, at the City's expense, to reflect the timing difference. The City will pay the difference within ten days of the date that the Board's notice of the amount due is received.

H. Any late payment to be made later than ten days after the Payment Date specified in the City's Notice of Intent is subject to approval by the Board.

**SECTION 3.** Section 3.36.575 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.575 Separate medical benefits account.**

A. There is hereby established the medical benefits account as a separate account within the retirement fund. The medical benefits account shall be maintained in compliance with Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. Monies in the medical benefits account may be commingled with other monies in the retirement fund solely for the purposes of investment.

B. All contributions made to the retirement fund to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this plan, and all earnings and interest attributable to such contributions, shall be placed in the medical benefits account. All contributions to the medical benefits account shall be reasonable and ascertainable. At the time the city makes a contribution to the medical benefits account, the city shall designate in writing that such contribution is solely for the medical benefits account.

C. Contribution rates to fund the benefits for sickness, accident, hospitalization, dental or medical expenses shall be established by the board as determined by the board's actuary and shall be borne by the city and the members of the plan as follows:

1. Contributions for dental benefits shall be made by the city and the members in the ratio of three-to-one.
2. Contributions for other benefits provided through the medical benefits account shall be made by the city and the members in the ratio of one-to-one.

D. Except as otherwise provided in this Section 3.36.575, all funds in the medical benefits account shall be used only for the payment of benefits and expenses allowed under Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. The medical benefits account shall be used to provide medical and dental benefits in accordance with Parts 14 and 15 of this chapter. Prior to the satisfaction of all liabilities under this plan to provide such benefits, no funds in the medical benefits account shall be used for, or diverted to, any other purpose.

E. All benefits provided through the medical benefits account, plus any life insurance protection provided under the plan, shall be subordinate to the retirement and survivors' benefits provided by the plan. Accordingly, at all times after the date on which the medical benefits account is established, the aggregate of the city's contributions to the medical benefits account shall not exceed twenty-five (25) percent of its total aggregate contributions to the plan (other than contributions to fund prior service). For the purpose of this limitation, city contributions include any contributions which are "picked-up" pursuant to Internal Revenue Code Section 414(h).

F. In any case under the terms of this plan where a person is entitled to a return of employee contributions, such return of contributions shall include the employee contributions to the medical benefits account plus interest accrued thereon at the rate of two (2) percent per annum; provided, however, that no such return of contributions shall be paid from the medical benefits account.

G. Upon the satisfaction of all liabilities under this plan to provide the benefits described in this section, any amount remaining in the medical benefits account shall be paid to the city.

H. In the event that a member's interest in the medical benefits account is forfeited prior to the termination of the plan, an amount equal to the forfeiture shall be applied as soon as practicable to reduce the city contributions to the medical benefits account.

I. City and member contributions to the medical benefits account shall be made on the same periodic basis as City and member contributions are made to the retirement fund. City contributions and member contributions to the medical benefits account may be paid on different payment schedules.

**SECTION 4.** Part 10 Chapter 3.36 of Title 3 of the San José Municipal Code is hereby amended by adding a section to be numbered and entitled and read as follows:

**3.36.1590 Time of payment of city contributions.**

A. Such monthly or biweekly contributions as are required of the City by the provisions of this Part 10 shall be paid by the city within ten days from and after the end of the month or two-week period for which they are made.

B. In lieu of making the monthly or biweekly contributions specified in this Part 10 for the pay periods commencing with the third pay period in fiscal year 2008-09, the City shall have the option to make, on or before August 1, 2008, an advance lump sum payment of the City's contributions to the medical benefits account and the retirement fund. The amount of such advance lump sum payment for fiscal year 2008-09 shall be as determined by the Board to be actuarially equivalent to the monthly or biweekly payments that would otherwise have been the City's required contributions to the medical benefits account and the retirement fund for the pay periods commencing with the third pay period in fiscal year 2008-09.

C. Commencing with fiscal year 2009-10, the City shall have an annual option to select the advance periodic basis on which City contributions to the medical benefits account and to the retirement fund for that fiscal year will be paid; provided that such payment schedule shall be no less frequent than quarterly. Except as may otherwise be agreed to by the Board, the notice of intent to exercise the option, including the advance periodic basis selected and the payment date(s) (the "Notice of Intent"), shall be provided by the City Manager to the Board on or before April 30th of the fiscal year prior to the fiscal year in which City may wish to exercise the option. The amount of the advance periodic payment(s) contained in City's Notice of Intent shall be as determined by the Board to be actuarially equivalent to the monthly or biweekly payment that would otherwise have been required.

D. In the event that written Notice of Intent to exercise the option to select an alternative periodic payment schedule, has not been given by the City Manager to the Board on or before April 30<sup>th</sup>, or such other date as may be approved by the Board, of each fiscal year, or if subsequent to the giving of such notice and prior to the commencement of the fiscal year, City elects not to exercise the option to select an alternative periodic payment schedule, City's payment of the City's contributions to the medical benefits

account and to the retirement fund shall be made monthly or biweekly as otherwise specified in this Part 10.

E. Such alternative periodic payments as are made by the City pursuant to the provisions of this Part 10 shall be paid by the City within ten days of the payment date(s) specified in City's Notice of Intent.

F. No later than the end of the second pay period in the fiscal year immediately following a fiscal year in which City has made a lump sum payment as specified in paragraph B and C, City shall provide to the Board a statement showing the actual amount of the City's payroll for members of the plan for the prior fiscal year. The Board shall then determine whether the lump sum advance payment(s) and the payment(s) that would otherwise have been required in the absence of the lump sum advance payment(s) are actuarially equivalent. The City shall pay any underpayment by the earlier of ten days following receipt of the Board's notice of determination or City's next contribution due date. The City shall receive credit for any overpayment in the form of an offset against the next payment(s) due by the City.

G. In the event that a City elected lump sum payment is made later than the Payment Date specified in the City's Notice of Intent, City's contribution to the medical benefits account and to the retirement fund will be recalculated by the Board's actuary, at the City's expense, to reflect the timing difference. The City will pay the difference within ten days of the date that the Board's notice of the amount due is received.

H. Any late payment to be made later than ten days after the Payment Date specified in the City's Notice of Intent is subject to approval by the Board.

PASSED FOR PUBLICATION of title this 17<sup>th</sup> day of June, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE,  
LICCARDI, OLIVERIO, PYLE, WILLIAMS, REED.

NOES: NONE.

ABSENT: NGUYEN.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk